

(e) The number of recovery actions initiated by the Medicaid agency under its agreement with the unit, and the total amount of overpayments actually collected by the Medicaid agency under this agreement;

(f) Projections for the succeeding 12 months for items listed in paragraphs (a) through (e) of this section;

(g) The costs incurred by the unit; and

(h) A narrative that evaluates the unit's performance; describes any specific problems it has had in connection with the procedures and agreements required under this part; and discusses any other matters that have impaired its effectiveness.

(Approved by the Office of Management and Budget under control number 0990-0162)

§ 1007.19 Federal financial participation (FFP).

(a) *Rate of FFP.* Subject to the limitation of this section, the Secretary will reimburse each State by an amount equal to 90 percent of the costs incurred by a certified unit which are attributable to carrying out its functions and responsibilities under this part.

(b) *Retroactive certification.* The Secretary may grant certification retroactive to the date on which the unit first met all the requirements of the statute and of this part. For any quarter with respect to which the unit is certified, the Secretary will provide reimbursement for the entire quarter.

(c) *Amount of FFP.* FFP for any quarter will not exceed the higher of \$125,000 or one-quarter of 1 percent of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State Medicaid program.

(d) *Costs subject to FFP.* (1) FFP is available under this part for the expenditures attributable to the establishment and operation of the unit, including the cost of training personnel employed by the unit. Reimbursement will be limited to costs attributable to the specific responsibilities and functions set forth in this part in connection with the investigation and prosecution of suspected fraudulent activities and the review of complaints of al-

leged abuse or neglect of patients in health care facilities.

(2) (i) Establishment costs are limited to clearly identifiable costs of personnel that—

(A) Devote full time to the establishment of the unit which does achieve certification; and

(B) Continue as full-time employees after the unit is certified.

(ii) All establishment costs will be deemed made in the first quarter of certification.

(e) *Costs not subject to FFP.* FFP is not available under this part for expenditures attributable to—

(1) The investigation of cases involving program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or other indications of fraud;

(2) Efforts to identify situations in which a question of fraud may exist, including the screening of claims, analysis of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received;

(3) The routine notification of providers that fraudulent claims may be punished under Federal or State law;

(4) The performance by a person other than a full-time employee of the unit of any management function for the unit, any audit or investigation, any professional legal function, or any criminal, civil or administrative prosecution of suspected providers;

(5) The investigation or prosecution of cases of suspected recipient fraud not involving suspected conspiracy with a provider; or

(6) Any payment, direct or indirect, from the unit to the Medicaid agency, other than payments for the salaries of employees on detail to the unit.

§ 1007.21 Other applicable HHS regulations.

Except as otherwise provided in this part, the following regulations from 45 CFR subtitle A apply to grants under this part:

Part 16, subpart C—Department Grant Appeals Process—Special Provisions Applicable To Reconsideration of Disallowances [Note that this applies only to disallowance determinations

Pt. 1008

and not to any other determinations, e.g., over certification or recertification];

Part 74—Administration of Grants;

Part 75—Informal Grant Appeals Procedures;

Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services, Effectuation of title VI of the Civil Rights Act of 1964;

Part 81—Practice and Procedure for Hearings Under 45 CFR part 80;

Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance;

Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

**PART 1008—ADVISORY OPINIONS
BY THE OIG**

Subpart A—General Provisions

Sec.

1008.1 Basis and purpose.

1008.3 Effective period.

1008.5 Matters subject to advisory opinions.

**Subpart B—Preliminary Obligations and
Responsibilities of the Requesting Party**

1008.11 Who may submit a request.

1008.15 Facts subject to advisory opinions.

1008.18 Preliminary questions suggested for the requesting party.

Subpart C—Advisory Opinion Fees

1008.31 OIG fees for the cost of advisory opinions.

1008.33 Expert opinions from outside sources.

**Subpart D—Submission of a Formal
Request for an Advisory Opinion**

1008.36 Submission of a request.

1008.37 Disclosure of ownership and related information.

1008.38 Signed certifications by the requestor.

1008.39 Additional information.

1008.40 Withdrawal.

**Subpart E—Obligations and Responsibilities
of the OIG**

1008.41 OIG acceptance of the request.

42 CFR Ch. V (10–1–97 Edition)

1008.43 Issuance of a formal advisory opinion.

1008.45 Rescission.

1008.47 Disclosure.

**Subpart F—Scope and Effect of OIG
Advisory Opinions**

1008.51 Exclusivity of OIG advisory opinions.

1008.53 Affected parties.

1008.55 Admissibility of evidence.

1008.59 Range of the advisory opinion.

AUTHORITY: 42 U.S.C. 1320a-7d(b).

SOURCE: 62 FR 7357, Feb. 19, 1997, unless otherwise noted.

Subpart A—General Provisions

§ 1008.1 Basis and purpose.

(a) This part contains the specific procedures for the submission of requests by an individual or entity for advisory opinions to, and the issuance of advisory opinions by, the OIG, in consultation with the Department of Justice (DoJ), in accordance with section 1128D(b) of the Social Security Act (Act), 42 U.S.C. 1320a-7d(b). The OIG will issue such advisory opinions based on actual or proposed factual circumstances submitted by the requesting individual or entity.

(b) An individual or entity may request an advisory opinion from the OIG regarding on any of 5 specific subject matters described in § 1008.5 of this part.

(c) The requesting party must provide a complete description of the facts as set forth in subpart B of this part, and pay the costs to the OIG of processing the request for an advisory opinion as set forth in subpart C of this part.

(d) Nothing in this part limits the investigatory or prosecutorial authority of the OIG, DoJ or any other agency of the Government.

§ 1008.3 Effective period.

The provisions in this part are applicable to requests for advisory opinions submitted on or after February 21, 1997, and before August 21, 2000, and to any requests submitted during any other time period for which the OIG is required by law to issue advisory opinions.